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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/316,990	05/24/1999	STEPHEN M. MEGINNISS III		8550

24737 7590 03/09/2004

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER

MATHEW, FENN C

ART UNIT PAPER NUMBER

3764

DATE MAILED: 03/09/2004

22

Please find below and/or attached an Office communication concerning this application or proceeding.

restart time (3)

Office Action Summary

Application No.

09/316,990

Applicant(s)

MEGINNISS ET AL.

Examiner

Fenn C Mathew

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7,9 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,9 and 12-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 7, 9, and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giuliani et al. in view of Roberts (U.S. 5,987,688). Giuliani discloses a driver assembly (24), a vibrating stimulator assembly (14) causing random movement and having a resonant frequency similar to the drive frequency (col. 4, line 54), the resonant frequency increasing under load (col. 9, line 38), base portion (15), and fingers (18). Giuliani shows a 150-400 Hz range, but does not include the range from 40-149 Hz. Such a limitation is considered a matter of obvious design choice based on user preference and within the knowledge of the skilled artisan to suit various applications. Giuliani lacks stimulators as claimed by the applicant. Roberts discloses an analogous device including soft, flexible, elastomeric stimulators (20) having rounded tops (see fig. 6 and 7), and cross sectional diameter in the range of 0.06 to 0.25 inches (col. 4, lines 24-26) and a shore A hardness preferably ranging from 35-55 (col. 4, lines 29-30). The specific length of the elastomeric stimulators are not disclosed, however, the claimed range is a matter of simple design choice encompassing the range of standard bristles on a tooth brush. It would have been obvious to one having ordinary skill in the art at the time of invention to provide the elastomeric stimulators of Roberts with the vibrating

toothbrush of Giuliani in order to allow a user to massage their gums while brushing their teeth. Furthermore regarding limitations drawn towards intended use, the modified Giuliani device has taught the claimed structural limitations, therefore, the intended use can be performed with the cited art.

Response to Arguments

3. Applicant's arguments with respect to claim 1-5, 7, 9 and 12-14 have been considered but are moot in view of the new ground(s) of rejection. Additionally applicant has arguments drawn towards the intended use of the device citing that applicant's device is not meant to brush the teeth, however this argument is not taken well. The intended use of prior art versus the claimed invention does not result in structural differences. Giuliani and Roberts have disclosed all the claimed structural limitations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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February 18, 2004



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